

AMENDED IN ASSEMBLY JULY 14, 2003

AMENDED IN SENATE APRIL 21, 2003

**SENATE BILL**

**No. 899**

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**Introduced by Senator Poochigian**

February 21, 2003

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An act to ~~amend Section 139.3 of the Labor Code~~, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 899, as amended, Poochigian. Workers' compensation: ~~physician referral.~~

*Existing law provides that an injury of an employee arising out of and in the course of employment is generally compensable through the workers' compensation system.*

*This bill would state the intent of the Legislature to improve the workers' compensation system by promoting the efficient delivery of high quality appropriate medical care.*

~~Existing workers' compensation law provides that it is unlawful for a physician to refer a person for specified medical goods or services whether for treatment or medical-legal purposes if the physician or his or her immediate family has a financial interest with the person or in the entity that receives the referral, except in prescribed circumstances.~~

~~This bill would add outpatient surgery, as defined, to the list of medical goods or services for which it is unlawful for a physician to refer a person under this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

~~SECTION 1.—Section 139.3 of the Labor Code is amended to~~  
*SECTION 1. It is the intent of the Legislature to improve the*  
*workers' compensation system by promoting the efficient delivery*  
*of high quality appropriate medical care.*

~~read:~~

~~139.3.—(a) Notwithstanding any other provision of law, to the~~  
~~extent those services are paid pursuant to Division 4 (commencing~~  
~~with Section 3200), it is unlawful for a physician to refer a person~~  
~~for clinical laboratory, diagnostic nuclear medicine, radiation~~  
~~oncology, physical therapy, physical rehabilitation, psychometric~~  
~~testing, home infusion therapy, outpatient surgery, or diagnostic~~  
~~imaging goods or services whether for treatment or medical-legal~~  
~~purposes if the physician or his or her immediate family has a~~  
~~financial interest with the person or in the entity that receives the~~  
~~referral.~~

~~(b) For purposes of this section and Section 139.31, the~~  
~~following shall apply:~~

~~(1) “Diagnostic imaging” includes, but is not limited to, all~~  
~~X-ray, computed axial tomography magnetic resonance imaging,~~  
~~nuclear medicine, positron emission tomography, mammography,~~  
~~and ultrasound goods and services.~~

~~(2) “Immediate family” includes the spouse and children of~~  
~~the physician, the parents of the physician, and the spouses of the~~  
~~children of the physician.~~

~~(3) “Physician” means a physician as defined in Section~~  
~~3209.3.~~

~~(4) A “financial interest” includes, but is not limited to, any~~  
~~type of ownership, interest, debt, loan, lease, compensation,~~  
~~remuneration, discount, rebate, refund, dividend, distribution,~~  
~~subsidy, or other form of direct or indirect payment, whether in~~  
~~money or otherwise, between a licensee and a person or entity to~~  
~~whom the physician refers a person for a good or service specified~~  
~~in subdivision (a). A financial interest also exists if there is an~~  
~~indirect relationship between a physician and the referral~~  
~~recipient, including, but not limited to, an arrangement whereby~~  
~~a physician has an ownership interest in any entity that leases~~  
~~property to the referral recipient. Any financial interest transferred~~  
~~by a physician to, or otherwise established in, any person or entity~~

1 ~~for the purpose of avoiding the prohibition of this section shall be~~  
2 ~~deemed a financial interest of the physician.~~

3 ~~(5) A “physician’s office” is either of the following:~~

4 ~~(A) An office of a physician in solo practice.~~

5 ~~(B) An office in which the services or goods are personally~~  
6 ~~provided by the physician or by employees in that office, or~~  
7 ~~personally by independent contractors in that office, in accordance~~  
8 ~~with other provisions of law. Employees and independent~~  
9 ~~contractors shall be licensed or certified when licensure or~~  
10 ~~certification is required by law.~~

11 ~~(6) The “office of a group practice” is an office or offices in~~  
12 ~~which two or more physicians are legally organized as a~~  
13 ~~partnership, professional corporation, or not-for-profit~~  
14 ~~corporation licensed according to subdivision (a) of Section 1204~~  
15 ~~of the Health and Safety Code for which all of the following are~~  
16 ~~applicable:~~

17 ~~(A) Each physician who is a member of the group provides~~  
18 ~~substantially the full range of services that the physician routinely~~  
19 ~~provides, including medical care, consultation, diagnosis, or~~  
20 ~~treatment, through the joint use of shared office space, facilities,~~  
21 ~~equipment, and personnel.~~

22 ~~(B) Substantially all of the services of the physicians who are~~  
23 ~~members of the group are provided through the group and are~~  
24 ~~billed in the name of the group and amounts so received are treated~~  
25 ~~as receipts of the group, and except that in the case of~~  
26 ~~multispecialty clinics, as defined in subdivision (l) of Section 1206~~  
27 ~~of the Health and Safety Code, physician services are billed in the~~  
28 ~~name of the multispecialty clinic and amounts so received are~~  
29 ~~treated as receipts of the multispecialty clinic.~~

30 ~~(C) The overhead expenses of, and the income from, the~~  
31 ~~practice are distributed in accordance with methods previously~~  
32 ~~determined by members of the group.~~

33 ~~(7) Outpatient surgery includes both of the following:~~

34 ~~(A) Any procedure performed on an outpatient basis in the~~  
35 ~~operating rooms, ambulatory surgery rooms, endoscopy units,~~  
36 ~~cardiac catheterization laboratories, or other sections of a~~  
37 ~~freestanding ambulatory surgery clinic, whether or not licensed~~  
38 ~~under paragraph (1) of subdivision (b) of Section 1204 of the~~  
39 ~~Health and Safety Code.~~

40 ~~(B) The ambulatory surgery itself.~~

~~(c) (1) It is unlawful for a licensee to enter into an arrangement or scheme, such as a cross-referral arrangement, that the licensee knows, or should know, has a principal purpose of ensuring referrals by the licensee to a particular entity that, if the licensee directly made referrals to that entity, would be in violation of this section.~~

~~(2) It shall be unlawful for a physician to offer, deliver, receive, or accept any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for a referred evaluation or consultation.~~

~~(d) No claim for payment shall be presented by an entity to any individual, third-party payor, or other entity for any goods or services furnished pursuant to a referral prohibited under this section.~~

~~(e) A physician who refers to or seeks consultation from an organization in which the physician has a financial interest shall disclose this interest to the patient or if the patient is a minor, to the patient's parents or legal guardian in writing at the time of the referral.~~

~~(f) No insurer, self-insurer, or other payor shall pay a charge or lien for any good or service resulting from a referral in violation of this section.~~

~~(g) A violation of subdivision (a) shall be a misdemeanor. The appropriate licensing board shall review the facts and circumstances of any conviction pursuant to subdivision (a) and take appropriate disciplinary action if the licensee has committed unprofessional conduct. Violations of this section may also be subject to civil penalties of up to five thousand dollars (\$5,000) for each offense, which may be enforced by the Insurance Commissioner, Attorney General, or a district attorney. A violation of subdivision (c), (d), (e), or (f) is a public offense and is punishable upon conviction by a fine not exceeding fifteen thousand dollars (\$15,000) for each violation and appropriate disciplinary action, including revocation of professional licensure, by the Medical Board of California or other appropriate governmental agency.~~